



Republican Policy Committee

Don Nickles, Chairman Kelly Johnston, Staff Director 347 Russell Senate Office Building (202)224-2946

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Justice Delayed — For Generations

"Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

Judge Learned Hand (*United States v. Garsson*, 291 F. 646 (D.S.N.Y. 1923)).

The death toll in the Oklahoma City bombing stands at 167, making it the deadliest mass murder in the history of the United States. Most Americans probably believe that the Oklahoma City bombers are going to be brought to justice swiftly and surely. Most Americans probably are going to be sorely disappointed.

A generation may pass away before justice is served.

Time Between Sentencing and Execution is Growing and Growing

In 1993 (the latest year for which the information in this paper is available), 38 persons on death row were executed in the United States. On average, those executions were carried out 113 months (almost 9 1/2 years) after the most recent sentencing date — which, of course, may have been years after the original sentencing date. The time to execution from the final sentence ranged from three months to 212 months (more than 17 years)

Moreover, the trend is to longer and longer delays in imposing the death penalty. The murderers who were executed in years 1977-1983 were put to death an average of 51 months (four years) after their latest sentencing, but those executed in the 1990's were put to death about 110 months after their latest sentencing. This is an increase of more than 100 percent over a decade.

If this trend continues, in the year 2010 the average person executed will have been on death row since 1995 — 15 years. Even by 2010, however, only a small fraction (perhaps 10 percent) of all murderers who received their final sentences in 1995 will have been executed.

Most Murderers Never See Death Row

Of course, most murderers are not given capital sentences at all, and of those who are, most are not executed. From 1973 through 1993, there were more than 400,000 murders in the United States, but just 4,984 persons were sentenced to death, and by the end of 1993, only 226 of them (4.5 percent) had been executed.

Such a system bodes well for the health and long life of America's murderers. The same cannot be said for their victims who are being shot, stabbed, and clubbed to death at a rate that is twice what it was 30 years ago.

Even the President Recognizes the Need for Habeas Reform

Habeas corpus procedures are not responsible for all of the delay in punishing murderers, but habeas corpus reform would be one way to help bring genuine justice to American criminal law.

President Clinton recently said on the television show "60 Minutes," "I do believe the habeas corpus provisions of federal law which permit these appeals sometimes to be delayed seven, eight, or nine years should be changed. I have advocated that. I tried to pass it last year. I hope the Congress will pass a review and a reform of the habeas corpus provisions because it should not take eight or nine years and three trips to the Supreme Court to finalize whether a person in fact was properly convicted or not."

Senator Majority Leader Bob Dole has said, "On this issue, I happen to agree with President Clinton. After watching his '60 Minutes' interview, I decided that the Senate Republican anti-terrorism plan should include habeas corpus reform as one of its key elements."

A bipartisan group of States' attorneys general recently wrote President Clinton saying, "[E]xpeditious consideration of [habeas corpus reform] legislation in the context of the anti-terrorism bill is entirely appropriate. Unless habeas corpus reform is enacted, capital sentences for such acts of senseless violence will face endless legal obstacles. This will undermine the credibility of the sanctions, and the expression of our level of opprobrium as a nation for acts of terrorism."

Staff contact: Lincoln Oliphant, 224-2946

[Sources: Bureau of Justice Statistics, "Capital Punishment 1993" (Bulletin Dec. 1994), Table 12 and Appendix Table 1 and *Sourcebook of Crim. Justice Statistics*, 1993, Table 3.107. Based on BJS data, RPC made the calculation of the trend line. The quotations from Pres. Clinton, Sen. Dole, and the attorneys general are taken from a letter from Sen. Bob Dole to Sen. Tom Daschle, May 15, 1995.]